

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 07, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT THEODORE KINNUNE,

Plaintiff,

v.

STATE OF WASHINGTON; and
WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Defendants.

No. 2:23-CV-00026-MKD

PROTECTIVE ORDER

On June 6, 2023, the Court granted Plaintiff's motion to compel and directed that the parties submit a proposed protective order regarding the documents to be produced. ECF No. 23. The parties provided a proposed protective order to chambers via email. The Court has reviewed the proposed protective order and finds good cause to issue the order as proposed.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. PURPOSES AND LIMITATIONS

3 Discovery in this action involves and is likely to involve production of
4 confidential, proprietary, or private information for which special protection may
5 be warranted. Accordingly, the parties stipulate to and petition the Court to enter
6 the following Protective Order in accordance with the Court's Order Granting
7 Motion to Compel and Protective Order. ECF No. 23. It does not confer blanket
8 protection on all disclosures or responses to discovery, the protection it affords
9 from public disclosure and use extends only to the limited information or items that
10 are entitled to confidential treatment under the applicable legal principles, and it
11 does not presumptively entitle parties to file confidential information under seal.

12 2. "CONFIDENTIAL" MATERIAL

13 "Confidential" material shall include the following documents and tangible
14 things produced or otherwise exchanged: (a) Performance reviews or evaluations
15 for April Ross, Ana Rivera-Georgeescu, and Defendants' other current or former
16 employees that would be exempt from disclosure under the Public Records Act,
17 Ch. 42.56 RCW; (b) Plaintiff's medical records; and (c) any individual person's
18 income tax information, social security numbers, passport numbers, driver license
19 numbers, private banking/financial account records or information (redact to the
20

1 last four digits), dates of birth (unless deceased), home addresses, personal
2 telephone numbers, and passwords.

3 3. SCOPE

4 The protections conferred by this agreement cover not only confidential
5 material (as defined above), but also (1) any information copied or extracted from
6 confidential material; (2) all copies, excerpts, summaries, or compilations of
7 confidential material; and (3) any testimony, conversations, or presentations by
8 parties or their counsel that might reveal confidential material.

9 However, the protections conferred by this agreement do not cover
10 information that is in the public domain or becomes part of the public domain
11 through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use confidential material that
14 is disclosed or produced by another party or by a non-party in connection with this
15 case only for prosecuting, defending, or attempting to settle this litigation.

16 Confidential material may be disclosed only to the categories of persons and under
17 the conditions described in this agreement. Confidential material must be stored
18 and maintained by a receiving party at a location and in a secure manner that
19 ensures that access is limited to the persons authorized under this agreement.
20

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including in house counsel) of
8 the receiving party to whom disclosure is reasonably necessary for this litigation,
9 unless the parties agree that a particular document or material produced is for
10 Attorney’s Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably necessary
12 for this litigation and who have signed the “Acknowledgment and Agreement to
13 Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party retaining
17 the copy or imaging service instructs the service not to disclose any confidential
18 material to third parties and to immediately return all originals and copies of any
19 confidential material;
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1 (f) during their depositions, witnesses in the action to whom disclosure is
2 reasonably necessary and who have signed the “Acknowledgment and Agreement
3 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
4 ordered by the court. Pages of transcribed deposition testimony or exhibits to
5 depositions that reveal confidential material must be separately bound by the court
6 reporter and may not be disclosed to anyone except as permitted under this
7 agreement;

8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Material. Performance reviews or evaluations for
11 April Ross, Ana Rivera-Georgeescu, and Defendants’ other current or former
12 employees shall be filed under seal. In addition, before filing other confidential
13 material or discussing or referencing such material in court filings, the filing party
14 shall confer with the designating party to determine whether the designating party
15 will remove the confidential designation, whether the document can be redacted, or
16 whether a motion to seal or stipulation and proposed order is warranted. During
17 the meet and confer process, the designating party must identify the basis for
18 sealing the specific confidential information at issue, and the filing party shall
19 include this basis in its motion to seal, along with any objection to sealing the
20 information at issue. A party who seeks to maintain the confidentiality of its

1 information bears the burden to satisfy the applicable legal requirements to do so,
2 even if it is not the party filing the motion to seal. Failure to satisfy this
3 requirement will result in the motion to seal being denied, in accordance with the
4 strong presumption of public access to the Court's files.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each party or non-party that designates information or items for protection under
8 this agreement must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The designating party must designate for
10 protection only those parts of material, documents, items, or oral or written
11 communications that qualify, so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited.

15 Designations that are shown to be clearly unjustified or that have been made for an
16 improper purpose (e.g., to unnecessarily encumber or delay the case development
17 process or to impose unnecessary expenses and burdens on other parties) expose
18 the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it
2 designated for protection do not qualify for protection, the designating party must
3 promptly notify all other parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as
6 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
7 protection under this agreement must be clearly so designated before or when the
8 material is disclosed or produced.

9 (a) Information in documentary form: (e.g., paper or electronic
10 documents and deposition exhibits, but excluding transcripts of depositions or
11 other pretrial or trial proceedings), the designating party must affix the word
12 "CONFIDENTIAL" to each page that contains confidential material. If only a
13 portion or portions of the material on a page qualifies for protection, the producing
14 party also must clearly identify the protected portion(s) (e.g., by making
15 appropriate markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings: the
17 parties and any participating non-parties must identify on the record, during the
18 deposition or other pretrial proceeding, all protected testimony, without prejudice
19 to their right to so designate other testimony after reviewing the transcript. Any
20 party or non-party may, within fifteen days after receiving the transcript of the

1 deposition or other pretrial proceeding, designate portions of the transcript, or
2 exhibits thereto, as confidential. If a party or non-party desires to protect
3 confidential information at trial, the issue should be addressed during the pre-trial
4 conference.

5 (c) Other tangible items: the producing party must affix in a prominent
6 place on the exterior of the container or containers in which the information or
7 item is stored the word "CONFIDENTIAL." If only a portion or portions of the
8 information or item warrant protection, the producing party, to the extent
9 practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party's right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party's confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption

1 or delay of the litigation, a party does not waive its right to challenge a
2 confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any
5 dispute regarding confidential designations without court involvement. Any
6 motion regarding confidential designations or for a protective order must include a
7 certification, in the motion or in a declaration or affidavit, that the movant has
8 engaged in a good faith meet and confer conference with other affected parties in
9 an effort to resolve the dispute without court action. The certification must list the
10 date, manner, and participants to the conference. A good faith effort to confer
11 requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
13 court intervention, the designating party may seek judicial intervention through the
14 telephonic process described in the Jury Trial Scheduling Order (See Dkt. 15 at 7)
15 or by filing and serving a motion to retain confidentiality. The burden of
16 persuasion in any such motion shall be on the designating party. Frivolous
17 challenges, and those made for an improper purpose (e.g., to harass or impose
18 unnecessary expenses and burdens on other parties) may expose the challenging
19 party to sanctions. All parties shall continue to maintain the material in question as
20 confidential until the court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this agreement. Such notification shall include a
11 copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under
17 this agreement, the receiving party must immediately (a) notify in writing the
18 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the protected material, (c) inform the person or persons
20 to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR
4 OTHERWISE PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain
6 inadvertently produced material is subject to a claim of privilege or other
7 protection, the obligations of the receiving parties are those set forth in Federal
8 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
9 whatever procedure may be established in an e-discovery order or agreement that
10 provides for production without prior privilege review. The parties agree to the
11 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals,
14 each receiving party must return all confidential material to the producing party,
15 including all copies, extracts and summaries thereof. Alternatively, the parties may
16 agree upon appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival
18 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
19 correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain
confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in
2 effect until a designating party agrees otherwise in writing or a court orders
3 otherwise.

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
5 production of any documents, electronically stored information (ESI) or
6 information, whether inadvertent or otherwise, in this proceeding shall not, for the
7 purposes of this proceeding or any other federal or state proceeding, constitute a
8 waiver by the producing party of any privilege applicable to those documents,
9 including the attorney-client privilege, attorney work-product protection, or any
10 other privilege or protection recognized by law. This Order shall be interpreted to
11 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
12 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
13 shall serve to limit a party's right to conduct a review of documents, ESI or
14 information (including metadata) for relevance, responsiveness and/or segregation
15 of privileged and/or protected information before production. Information
16 produced in discovery that is protected as privileged or work product shall be
17 immediately returned to the producing party.

1 **IT IS SO ORDERED.** The District Court Executive is directed to file this
2 order and provide copies to counsel.

3 **DATED** June 7, 2023.

4 *s/Mary K. Dimke*
5 MARY K. DIMKE
6 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on [date] in the case of *Kinnune v. State*, No. 2:23-cv-00026-
MKD. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject
to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Western District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____